

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

GERALD J. PENNINGTON and CAROL PENNINGTON, Plaintiffs, v. PIONEER ENTERPRISES, INC., a South Dakota corporation, and BRANDI L. OLSEN, Defendants.	CIV. 22- <u>5075</u> COMPLAINT
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Plaintiffs, Gerald J. Pennington, and Carol Pennington, state their claim against Defendants Pioneer Enterprises, Inc., a South Dakota Corporation and Brandi L. Olsen, as follows:

INTRODUCTION

1. This action arises from the serious and permanent bodily injuries suffered by Plaintiff Gerald Pennington when he took necessary evasive action to avoid a collision with a van driven by Defendant Pioneer Enterprise, Inc.'s employee, Brandi Olsen, who failed to yield the right-of-way to Pennington at the intersection of S.D. Highway 79 and U.S. Highway 212 in Butte County, South Dakota on August 13, 2020.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked under the authority of 28 U.S.C. § 1332. The Plaintiffs and Defendants are citizens of different states and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.

3. Venue is appropriately before this District Court as provided in 28 U.S.C. § 1391, that is, Defendants either do business and/or reside within this Judicial District and the events giving rise to the claim that is the subject of this action occurred here.

PARTIES

4. Plaintiffs Gerald J. Pennington and Carol Pennington are currently, and were at the time of Gerald's injuries, citizens of the State of Michigan.

5. Defendant Pioneer Enterprises Inc. is a South Dakota corporation with its principal place of business in Sioux Falls, and operations in Western South Dakota.

6. Defendant Brandi L. Olsen was, at the time of the event upon which this action is based, a citizen of Butte County, South Dakota.

GENERAL ALLEGATIONS

7. Upon information and belief, and at all times relevant to this action, Brandi Olsen was acting in the course, scope, and agency of her employment with Pioneer Enterprises, Inc. and/or its related companies or subsidiaries. Pioneer Enterprises, Inc. is therefore in all respects, vicariously liable for Olsen's actions as described in this Complaint.

8. On August 13, 2020, at about 6:32 p.m., Defendant Olsen was driving a 2011 Dodge Grand Caravan east on U.S. Highway 212 where it intersects with S.D. Highway 79 in eastern Butte County, South Dakota.

9. At the same time, Gerald Pennington was traveling south on U.S. Highway 79 on his 2003 Harley Davidson motorcycle.

10. A stop sign controlled eastbound traffic on U.S. Highway 212 as it intersects with S.D. Highway 79. Traffic entering the intersection on S.D. Highway 79, from either the north or south have no stop signs however, governing their travel, allowing north/south traffic to travel

through the intersection without stopping. The posted speed limit through the intersection for S.D. Highway 79 traffic is 65 m.p.h.

11. As Olsen approached the intersection of Highways 212 and 79, she did a 'stop and go,' that is did a brief stop and then proceeded into the intersection directly in the path of Gerald Pennington, who was traveling south on Highway 79.

12. At that moment, Gerald Pennington, seeing that a broadside collision with Olsen's van was imminent, had no choice but to take evasive action to avoid a certain collision. He intentionally laid his bike down, which caused it to tumble and slide for a great distance before both the motorcycle and Pennington's body came to rest. He was in all respects, operating his motorcycle in compliance with South Dakota law.

13. The injuries suffered by Pennington were substantial, severe, and permanent.

**COUNT ONE
NEGLIGENCE AND NEGLIGENCE PER SE
(BRANDI OLSEN & PIONEER ENTERPRISES, INC.)**

14. Olsen had a duty to Gerald Pennington to operate the Dodge Grand Caravan in a manner consistent with her common law and statutory duties.

15. Olsen breached her common law and statutory duties to Gerald Pennington, in her acts and omissions, which are negligence and /or negligence per se, as set out in the following examples, which are not exclusive:

- a) Failing to keep a proper lookout for oncoming traffic.
- b) Failing to yield the right-of-way to oncoming traffic.
- c) Entering a controlled intersection in violation of SDCL § 32-29-2.1, which provides:

[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop ... before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered or is approaching the intersection from another highway and may not proceed into the intersection until certain that such intersecting roadway is free from oncoming traffic which may affect safe passage. A violation of this section is a Class 2 misdemeanor.

16. The negligence or negligence per se of Olsen and Pioneer Enterprises Inc. is the legal cause of the serious, permanent bodily injury and resulting damages suffered by the Penningtons.

17. Among Penningtons' damages are the substantial medical expenses incurred for Gerald's care, including therapeutic and rehabilitation services, home health services, medicine, and follow-up care. It is reasonably likely that these medical expenses will be incurred into the future.

18. Gerald has endured great physical pain, extreme mental suffering, disfigurement, disability, and general loss of the ability to enjoy life. These losses are likely permanent in nature.

19. Gerald has also lost the reasonable value of time to attend to resulting in an economic loss that is also likely to continue into the future.

**COUNT TWO
LOSS OF CONSORTIUM AND HOME HEALTH
(CAROL PENNINGTON)**

20. The negligence or negligence per se of Olsen and Pioneer Enterprises, Inc. is the legal cause of Carol Pennington's separate and distinct damages, including but not limited to deprivation of her husband Gerald Pennington's financial support, services in their home, advice, counsel, assistance, protection, companionship, society, and marital relations.

**COUNT THREE
NEGLIGENT HIRING/RETENTION
(PIONEER ENTERPRISES, INC.)**

21. At the time of this occurrence, Olsen was employed by Pioneer Enterprises, Inc. and/or its related companies or subsidiaries, and was also considered a statutory employee of Pioneer Enterprises, Inc., and/or its related companies or subsidiaries, by virtue of federal law.

22. At all times material, Olsen was an agent of Pioneer Enterprises, Inc., and/or its related companies or subsidiaries, and was acting in the course and scope of her agency and authority.

23. The negligence of Olsen was committed in the course and scope of the authority granted by Pioneer Enterprises, Inc., and/or its related companies or subsidiaries to its employees.

24. As a legal cause of the negligent acts and omissions of Olsen and Pioneer Enterprises, Inc., and/or its related companies or subsidiaries, Penningtons suffered injuries as set forth in this Complaint.

**COUNT FOUR
PUNITIVE DAMAGES
(BRANDI OLSEN & PIONEER ENTERPRISES, INC.)**

25. Brandi Olsen and Pioneer Enterprises, Inc.'s acts, as set out in this action, demonstrate reckless indifference for Jerry's wellbeing to the degree that Plaintiffs Pennington are entitled to exemplary damages in an amount to be determined to be appropriate by a jury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- 1) For all past and future special damages allowed under South Dakota law.
- 2) For all past and future general damages allowed under South Dakota law.

3) For prejudgment and post-judgment interest, costs and disbursements allowed under South Dakota law.

4) For exemplary damages in an amount to be determined by a jury at the time of trial.

5) For all and further relief as the Court should determine.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated this 12th day of August, 2022.

BARKER LAW FIRM, LLC

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Attorneys for Plaintiffs

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gerald J. Pennington, and Carol Pennington,

(b) County of Residence of First Listed Plaintiff Oakland

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kenneth E. Barker, Barker Law Firm, LLC
PO Box 100, Belle Fourche, SD 57717 (605) 723-8000**DEFENDANTS**Pioneer Enterprises, Inc., a South Dakota corporation, and
Brandi L. OlsenCounty of Residence of First Listed Defendant Minnehaha

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §§ 1391 and 1332

Brief description of cause:

Near miss between vehicle and motorcycle resulting in injuries to Plaintiff motorcyclist

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
8-12-2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____